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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,623	03/16/2004	Chuang Chun Chiueh	CHIU3036/EM	9675

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EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

MAIL DATE	DELIVERY MODE
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04/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/800,623	CHIUEH, CHUANG CHUN	
	Examiner	Art Unit	
	DEBBIE K. WARE	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-33 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 26-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-17 and 19-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 14-33 are pending.

Election/Restrictions

Applicant's election without traverse of Group I, claims 14-17 and 19-25, in the reply filed on December 29, 2008, is acknowledged.

Claims 18 and 26-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on December 29, 2008.

Response to Amendment

The amendment filed July 17, 2008, has been received and entered. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Response to Arguments

The arguments filed July 17, 2008, have been deemed persuasive and the previous rejections have been removed. However, in light of new art the claims are rejected over the newly applied prior art.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by newly cited Shilo et al (USP 4693842), cited on enclosed PTO-892 Form.

Claim is drawn to an organic blue-green algae.

Shilo et al teach an organic blue-green algae. See the abstract.

The claim is identical to the cited disclosure and is, therefore, considered to be anticipated by the teachings therein. Although a different process may have been used to provide for the algae such process does not mean that the algae is different than the one disclosed by Shilo et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-17 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over newly cited Shilo et al (USP 4693842) in view of newly cited Nakabayashi (USP 3962466).

Claims are drawn to a method for culturing organic blue-green algae.

Shilo et al teach obtaining a culture medium comprising a fermented and aerated high-nitrogen organic substance and free of inorganic salts and obtaining the algae species, and inoculating the medium and culturing the algae in a culture medium. See abstract, and col. 5, lines 15-18 and col. 4, line

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Nakabayashi teaches including in a culture medium edible microorganisms, such as *Bacillus subtilis*. Note col. 2, lines 20-25 and lines 34-36.

The claims differ from Shilo et al in that additional microorganisms in the culture medium are not disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the teachings of Shilo et al and Nakabayashi in order to provide for a culture medium free of inorganic additives and including edible microorganisms, like *Bacillus subtilis* because Shilo et al teach that it is not desirable to add calcium. Thus, to provide for a high protein medium not comprising inorganic salts but comprising nitrogen is clearly within the purview of an artisan because the reference teaches that it not desirable to add them because they bind to the algae during culturing.

Thus, one of skill would have expected successful results by eliminating inorganic additives during culturing the algae. The organic matter comprised by the culture would have been expected to be high in protein and further to select a culture medium free of sodium carbonate, etc. is clearly an obvious modification of the cited prior art. To add an edible microbe such as *Bacillus subtilis* is clearly an obvious modification as well and is disclosed by Nakabayashi. Each of the claims features are either disclosed or suggested by the cited prior art. The claims are rendered *prima facie* obvious over the cited prior art.

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All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

/Deborah K. Ware/

Deborah K. Ware

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